

**MINUTES OF THE  
LAW ENFORCEMENT AND CRIMINAL JUSTICE INTERIM COMMITTEE**

Wednesday, November 19, 2008 – 9:00 a.m. – Room C415 State Capitol

**Members Present:**

Sen. Jon Greiner, Senate Chair  
Rep. DeMar "Bud" Bowman, House Chair  
Sen. D. Chris Buttars  
Sen. William "Bill" Hickman  
Sen. Scott D. McCoy  
Rep. Brad L. Dee  
Rep. David Litvack  
Rep. Rebecca D. Lockhart  
Rep. Michael T. Morley  
Rep. Jennifer M. Seelig  
Rep. Kenneth W. Sumsion  
Rep. Stephen H. Urquhart  
Rep. Larry B. Wiley  
Rep. Carl Wimmer

**Members Absent:**

Rep. Curtis Oda

**Staff Present:**

Mr. Stewart E. Smith, Policy Analyst/Special Projects Mgr.  
Ms. Susan Creager Allred, Associate General Counsel  
Ms. Wendy Bangerter, Legislative Secretary

**Note:** A list of others present, a copy of related materials, and an audio recording of the meeting can be found at [www.le.utah.gov](http://www.le.utah.gov).

**1. Committee Business**

Chair Bowman called the meeting to order at 9:10 a.m.

**MOTION:** Sen. Buttars moved to approve the minutes of the October 15, 2008 meeting. The motion passed unanimously. Rep. Dee, Rep. Morley, Rep. Wiley, and Rep. Wimmer were absent for the vote.

Chair Bowman called attention to the statutory report from the Emergency Medical Services Committee that was previously distributed to the Committee. The Immigration Interim Committee's report was also distributed to the Committee for its review.

**2. Pawnshop and Secondhand Merchandise Advisory Board Activities**

Mr. Kevin Olsen, Director, Division of Consumer Protection, referred to and updated the report submitted by the Division of Consumer Protection regarding the activities and services of the Pawnshop and Secondhand Merchandise Advisory Board. The report had previously been distributed to the Committee.

Mr. Michael Katsanevas, Chair, Pawnshop and Secondhand Merchandise Advisory Board (Board), expressed appreciation for the support given to the Board.

Rep. Lockhart advised the Committee that she plans to introduce legislation in the 2009 General Session that will clarify some of the roles and the direction of the Board.

**3. Criminal Procedure - Investigation Amendments**

Rep. Ray explained 2009 General Session draft legislation, "Criminal Procedure - Investigation Amendments," included in the committee's mailed packet. Its purpose is to add municipal attorneys to the definition of prosecutor regarding investigations as addressed within the Code of Criminal Procedure.

Committee discussion followed.

**MOTION:** Sen. Hickman moved to adopt 2009 General Session draft legislation, "Criminal Procedure - Investigation Amendments" as a committee bill. The motion passed unanimously. Sen. McCoy and Rep. Morley were absent for the vote.

#### **4. Prohibited Gang Activity**

Sen. Greiner reviewed the research involved in drafting 2009 General Session draft legislation, "Prohibited Gang Activity." He explained that the purpose of the bill is to create the offense of loitering by a group that includes a known criminal gang member in a prohibited public place after a law enforcement officer has required that members of a group disperse and has warned them of the penalty for failure to comply.

Committee discussion followed.

Rep. Litvack expressed concern that a situation subject to the bill could be viewed as a racially related situation.

**MOTION:** Sen. Hickman moved to adopt 2009 General Session draft legislation, "Prohibited Gang Activity," as a committee bill. The motion passed with Rep. Litvack voting in opposition. Sen. McCoy was absent for the vote.

#### **5. Prohibited Activities of Gang Offenders**

Sen. Greiner introduced 2009 General Session draft legislation, "Prohibited Activities of Gang Offenders." He explained its purpose, which is to provide that after conviction for a gang related offense a person will be prohibited from engaging in certain activities. The bill was included in the committee's mailed packet.

Committee discussion followed.

**MOTION:** Rep. Wimmer moved to adopt 2009 General Session draft legislation, "Prohibited Activities of Gang Offenders," as a committee bill. The motion passed unanimously. Sen. McCoy and Rep. Seelig were absent for the vote.

#### **6. Sex Offender Registration Amendments**

Rep. Sumsion introduced 2009 General Session draft legislation, "Sex Offender Registration Amendments," which was distributed to the Committee at the meeting. He explained that the bill would modify the sex offender registration process by requiring that offenders register changes in status with a local law enforcement agency, rather than with the Department of Corrections, after the offenders are no longer under the supervision of the Division of Adult Probation and Parole.

Committee discussion followed.

Mr. Mike Haddon, Deputy Director, Department of Corrections, explained the current practice regarding oversight and registration of offenders.

Mr. Frank Budd, Executive Director, Utah Chiefs of Police Association, spoke for the Association in support of the bill.

**MOTION:** Rep. Lockhart moved to adopt 2009 General Session draft legislation, "Sex Offender Registration Amendments," as a committee bill. The motion passed unanimously. Sen. McCoy was absent for the vote.

## **7. Incest Amendments**

Sen. Stowell reviewed 2009 General Session draft legislation, "Incest Amendments," which was included in the committee's mailed packet. He explained that the present law prohibits sexual intercourse constituting incest, but that incest committed by other means of fertilization cannot be prosecuted under this law. He stated that the proposed bill would amend the definition of incest to allow prosecution of incest in these other circumstances.

Dr. John M. Opitz, Professor of Pediatrics, Human Genetics, Pathology, Obstetrics, and Gynecology at the University of Utah, distributed his written testimony. He provided a summary of his written statement, and noted the problems he sees in the current statutory definition of incest. He spoke in support of the bill.

Sen. Stowell distributed an email from Dr. Mario Capecchi, colleague of Dr. Opitz and recipient of the Nobel Prize, which explained the availability of significant data on the increased risks of birth defects in children of close relationship matings.

Sen. Stowell distributed and explained an amendment to the bill.

**MOTION:** Sen. Hickman moved to adopt the following amendment:

1. Line 72: After Line 72, insert: (c) This Subsection (2) does not prohibit providing a fertilized human egg if the provider of the fertilizing sperm is not a related person regarding the person providing the egg.
2. Move the language providing definitions so that the language becomes Subsection (1), and renumber the contents of the bill accordingly.

The motion passed unanimously with Sen. McCoy absent for the vote.

Mr. Troy Little, Chief Deputy, Iron County Attorney, explained the need for this change in the law in order to prosecute this sexual offense and protect children.

Mr. Elend LeBaron, resident of Iron County, testified that through DNA testing, he and his brothers learned that his father had sired children with their sister. He explained that the statutory definition of incest became an obstacle to prosecution in this case. He asked the committee members to approve the legislation in the 2009 General Session in an effort to protect future children.

Committee discussion followed. Committee members expressed appreciation to Mr. LeBaron for his efforts and his coming forward with his experience and concerns.

**MOTION:** Sen. Greiner moved to adopt 2009 General Session draft legislation, "Incest Amendments," as amended as a committee bill. The motion passed unanimously with Sen. McCoy absent for the vote.

## **8. Gun Dealer Penalty Amendments**

Rep. Wimmer explained that 2009 General Session draft legislation, "Gun Dealer Penalty Amendments," addresses violations of the criminal background check provisions in Utah Code Section 76-10-526 by a licensed handgun dealer. The bill makes the penalty for a violation consistent with the federal penalty, which is a Class A misdemeanor.

Mr. James Vilos, attorney expert in firearms law, explained the need to make state law conform to federal law regarding the Brady Act.

**MOTION:** Sen. Buttars moved to adopt 2009 General Session draft legislation, "Gun Dealer Penalty Amendments," as a committee bill. The motion passed unanimously. Sen. McCoy and Rep. Urquhart were absent for the vote.

## **9. Investigative Administrative Subpoenas**

Rep. Brad Daw explained the purpose of 2009 General Session draft legislation, "Investigative Administrative Subpoenas," which was distributed to the Committee and involves the investigation of online sexual exploitation of a minor.

Mr. Paul Amann, prosecutor for Internet Crimes Against Children Task Force, Office of the Attorney General, explained the difficulties in obtaining subpoenas from the courts in a timely manner so that the detected online criminal activity can be investigated and arrests made more quickly.

Mr. Ken Wallentine, Chief Prosecutor for the Office of the Attorney General, explained other critical benefits of the bill, including investigative resources already under federal law.

Committee discussion followed resulting in the addition of an immediate effective date to the bill.

**MOTION:** Rep. Wimmer moved to amend 2009 General Session draft legislation, "Investigative Administrative Subpoenas," to include an immediate effective date. The motion passed unanimously. Sen. McCoy and Rep. Urquhart were absent for the vote.

**MOTION:** Rep. Sumsion moved to adopt 2009 General Session draft legislation, "Investigative Administrative Subpoenas," as amended, as a committee bill. The motion passed unanimously. Sen. McCoy and Rep. Urquhart were absent for the vote.

## **10. Matrix Sentencing Guidelines**

Sen. Buttars explained that matrix sentencing is a nonbinding tool used by courts and the Board of Pardons and Parole. It provides an average length of stay for each category of crime and guidelines. However, in individual cases, the sentences may vary depending on the circumstances.

Mr. Curtis L. Garner, Chair, Utah Board of Pardons and Parole, answered questions from the committee, emphasizing that each case is handled individually.

Mr. Tom Patterson, Executive Director, Utah Board of Pardons and Parole, stated that Utah is one of the few states with indeterminate sentences and that it is a good system.

#### **11. Other Items / Adjourn**

Chair Bowman, who is leaving the Legislature after 16 years, expressed appreciation as House Chair of the Committee for its interim work and for his opportunity to have served with the Legislature and this Committee.

The Committee gave Chair Bowman a standing ovation of appreciation for his service and leadership.

**MOTION:** Rep. Wimmer moved to adjourn the meeting. The motion passed unanimously with Sen. Hickman, Sen. McCoy, and Rep. Dee absent for the vote.

Chair Bowman adjourned the meeting at 11:20 a.m.